

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING MOTION TO STRIKE  
AND GRANTING MOTIONS TO FILE UNDER SEAL**

On September 13, 2005, Qwest Communications Corporation (Qwest) filed a motion to strike portions of Applicants' Opening Brief.<sup>1</sup> The material subject to the motion to strike appears on pages 59 and 60 of Joint Applicants' Opening Brief discussing the Qwest business documents entered into evidence as Exhibit 121C.

Qwest asserts that this portion of the brief directly contravenes the ALJ's ruling of August 16, 2005, limiting the evidentiary use of the confidential exhibit referenced on pages 59 and 60 of the brief. ORA filed a pleading in support of the Qwest motion to shorten time for response.

---

<sup>1</sup> Qwest filed its motion both in confidential redacted form under seal and also in redacted form.

Applicants submitted a response in opposition to the motion on September 15, 2005, under the schedule set by the ALJ. Applicants argue that Qwest's motion reflects a mischaracterization of Applicants' use of Exhibit 121C. The ALJ's ruling states that Applicants may use Exhibit 121C "for purposes of showing the extent to which Qwest has concerns about the impact of the merger on its operations and may be harmed by the merger." (14 Tr. 2188-89.) Applicants claim that they have used Exhibit 121C exactly in the manner prescribed in the ruling. Accordingly, Applicants argue that Qwest's motion to strike should be denied.

Applicants provided a confidential unredacted version and a public redacted version of their response in opposition. Applicants set forth arguments to defend their position that the disputed material set forth on pages 59 and 60 of their brief is proper, and should not be stricken. Applicants state that the premise of Qwest's argument appears to be that, although Applicants can use Exhibit 121C to show that Qwest has no concerns that it will be harmed by the merger, Applicants cannot use them to show what competitive issues Qwest believes actually could harm it. Applicants argue that evidence showing that Qwest's competitive concerns do *not* include the merger but *do* include other factors is probative of whether the merger or the other factors are the real cause of Qwest's competitive concerns.

Based upon review of the arguments presented both by Qwest and by Applicants, including those in the confidential portions of their unredacted pleadings, it is concluded that Qwest's motion to strike should be denied. Qwest retains the opportunity to challenge Applicants' substantive claims in its reply brief.

**IT IS RULED** that:

1. The motion of Qwest Communications Corporation (Qwest) is hereby denied to strike portions of pages 59 and 60 of the Applicants' Opening Brief.
2. The motion of Qwest is hereby granted to file under seal the unredacted confidential version of its motion to strike.
3. The motion of Applicants is hereby granted to file under seal the unredacted confidential version of their response in opposition to Qwest's motion to strike.

Dated September 16, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Strike and Granting Motions to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated September 16, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.